

## **Chicago Expands Mandatory Affordable Housing for Private Residential Development**

Chicago is in the forefront of cities recognizing the critical shortage in affordable housing for their residents and is taking bold actions to address the problem. In 2004, the Chicago Rehab Network estimated a shortage of 49,000 affordable rental units in Chicago, reporting that almost 200,000 Chicago households were "rent burdened." This status is reached when a household pays over 35% of its income for housing. According to the CRN report, 116,000 Chicago households pay over 50% of their total income toward housing expenses and often forgo other necessities. With the elimination of many of the Chicago Housing Authority's high-rises and mid-rises, an estimated 6,500 families are, or will be, permanently or temporarily displaced.

To address these growing problems, the City administers a number of programs aimed at increasing the supply of affordable housing. Since 2003, the City has sought to expand these initiatives by requiring developers to provide affordable housing stock in private developments in specific circumstances. Pursuant to the terms of an ordinance that was passed in 2003, if the City sold land for a residential development at a discount from fair market value, the developer was required to include 10% of the total units created in that development for qualifying affordable housing purchasers. Additionally, where the developer received any financial assistance from the City for a residential development (such as TIF funding), 20% of the total number of dwelling units created in that development were required to be affordable. In both cases, the developer could elect, in lieu of providing on-site affordable units, to make a cash contribution to the City's affordable housing development fund in the amount of \$100,000 per affordable unit. In 2004, with the adoption of the comprehensive re-write and overhaul of the Chicago Zoning Ordinance, the City tightened the conditions for obtaining downtown zoning density bonuses by expanding the list of circumstances in which affordable housing stock was required to be created in private residential development.

The affordable housing program governed by the 2003/2004 ordinances produced fewer units than the City expected and needed. In May of this year, the City amended the 2003 ordinance in order to substantially broaden the scope of the program to require developers to include affordable housing stock in private residential developments.

The 2007 amendments make affordable housing (or cash in lieu of housing) mandatory for any residential development consisting of 10 units or more where the project involves a re-zoning that results in a higher FAR density or that allows residential uses not otherwise permitted in the original zoning district. The amended ordinance also requires affordable housing in any residential development of 10 units or more involving the purchase of land from the City, whether sold at below-market prices or not. Other changes arising from the amended ordinance further toughen mandatory requirements. These include requiring any residential development of 10 units or more located within any planned development to meet the affordable housing requirements; establishing an annual cost of living increase for the payment-in-lieu contribution (currently \$100,000 per unit); and imposing tougher penalties for violation of the ordinance. On the other hand, some changes arising from the new ordinance provide additional flexibility for residential developers. These include requiring fewer affordable for-sale units where the for-sale units are offered to buyers at the 80% average median income level, rather than the otherwise required 100% level; and limiting the applicability of the affordable housing requirements to a period of 3 years following the rezoning or land purchase, provided that no construction permit is applied for during that period.

Abbreviated responses to key questions regarding the City's affordable housing requirements, in effect as of the most recent ordinance amendment, include the following:

**When is On-Site Affordable Housing Or Cash In Lieu Required?**

The affordable housing requirements are triggered for projects of 10 or more units if: (1) the project property is re-zoned and thereby increases the allowable FAR or thereby allows previously un-permitted residential uses (10%); (2) all or any portion of the project property has been purchased from the City (10%); (3) the project is located within a planned development zoning classification (10%), except developer may elect to use, if applicable, the alternative bonus calculation); or (4) the project receives any City financial assistance (such as TIF funding) (20%).

**How is Affordable Housing Defined?**

Affordable housing is defined for rental units as affordable to and occupied by households with household income below 60% of the area median household income and with respect to for-sale units as affordable to and purchased by households with income below 100% of the area median household income (although the number of for-sale units may be reduced if they are affordable to households with income below 80%).

**How are Cash-In-Lieu Contributions Calculated?**

The required contribution is equal to \$100,000 per required affordable unit that is not provided on-site. For example, in a residential project consisting of 100 units that involves a re-zoning increasing the FAR, the number of affordable units at 10% would be 10 units. 10 affordable units at \$100,000 per unit results in a total contribution of \$1,000,000. If the project receives City financial assistance, however, the contribution (at 20%) would be \$2,000,000. In a planned development, under certain circumstances, a developer may elect to use the alternative floor area bonus calculation.

If you have any questions, please contact Rick Wendy (312.360.6275; [rwendy@freebornpeters.com](mailto:rwendy@freebornpeters.com)) or David Warner (312.360.6586; [dwarner@freebornpeters.com](mailto:dwarner@freebornpeters.com)).